# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 1704 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**DHIRAJBEN R KATARMAL - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 3 - Respondent(s)**

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**Appearance :**

MR TUSHAR MEHTA for Petitioner(s) : 1,
SHRI KB TRIVEDI, LD. AD.ADVOCATE GENERAL with MS. SANGITA VISHEN, LD. AGP for Respondent(s) : 1,
MR AR THACKER for Respondent(s) : 2,
None for Respondent(s) : 3 - 4.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 21/09/2005**

**ORAL JUDGMENT**

1.In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality

and validity of the order passed by the Additional Chief Secretary, Urban Development & Urban Housing Development Department, State of Gujarat dated 31.1.2005 in removing the petitioner as a Councillor of Jamnagar Municipal Corporation exercising powers under Section 13 of the Bombay Provincial Municipal Corporation Act (hereinafter referred to as 'The BPMC Act').

2. Number of submissions have been made on behalf of the petitioner on merits challenging the order passed by the Additional Chief Secretary dated 31.1.2005, however, the main ground submitted on behalf of the petitioner is that the petitioner was directed to be heard pursuant to the order passed by this Court passed in Special Civil Application No.6894/2002 and the hearing was given to the petitioner by one Bhattacharya, IAS Additional Secretary to Department and the petitioner was heard on 8.4.2003 by the said Shri Bhattacharya. However, he was subsequently transferred and the impugned order came to be passed by another Officer after a period of 2 years and that too, the said Officer has not heard the petitioner and therefore, it is submitted that the impugned order

dated 31.1.2005 is in breach of principle of natural justice.

3. Shri Tushar Mehta, learned advocate appearing on behalf of the petitioner has relied upon the judgment of the Division Bench of this Court in support of his above submission in the case of ***(M/s) Shree Ram Packaging & Another V/s. Union of India and Another reported in 1990 (2) G.L.H. P.343*** to contend that Hearing before one Officer and order passed by Another Officer, not permissible and the same amounts to violation of principle of natural justice. Shri Mehta learned advocate appearing on behalf of the petitioner has also relied upon the decision of learned Single Judge of this Court in case of ***M.D.Gohil V/s. State of Gujarat reported in 37-3 (1996) G.L.R. P. 134***. Considering the facts and circumstances of the case, since this Court proposes to dispose of the present Special Civil Application by remanding the matter to the respondent No.1 for deciding the same afresh after hearing the petitioner, this Court is not at present going into the legality and validity of the impugned order passed on merits.

4.Shri K.B. Trivedi, learned Additional Advocate General has submitted that the impugned order has been passed for and on behalf of His Excellency The Governor of Gujarat and as per the rules of business the file goes from one Office to another along with notings and therefore, even if the petitioner was not heard by the Officer who has passed the impugned order, it cannot be said to be in breach of principles of natural justice. He has further submitted that as such, no personal hearing was required while taking decision under Section 13 of the Act and that what is contemplated under Section 13 of the Act is that a reasonable opportunity of showing cause why the recommendations to remove him or her as a Councillor should not be made. It is also submitted by him that as such, no hearing is contemplated before the State Government while taking decision on recommendations of the Corporation. He has further submitted that merely because the petitioner was given an audience and/or opportunity of hearing before the State Government before passing impugned order, it cannot confer any right in her favour to ask for the personal hearing though the same is not contemplated under Section 13 of the Act.

5.Shri Kamal Trivedi, learned Additional Advocate General is right in submitting that no personal hearing is required to be given by the State Government before passing the order under Section 13 of the Act and what is required is that the State Government may on the recommendation of the Corporation supported by the vote of not less than three-forth of the whole number of Councillors, remove from Office any Councillor elected under the B.P.M.C. Act if it is satisfied that such Councillor has been guilty of misconduct in the discharge of his duty or of any disgraceful conduct and/or become incapable of performing his duty as a Councillor, provided that no recommendation shall be made by the Corporation under Section 13 of the Act unless the Councillor to whom it relates has been given a reasonable opportunity by showing cause why such recommendation should not be made. However, it is required to be noted that the petitioner was required to be given an opportunity of being heard pursuant to the order passed by the learned Singal Judge of this Court dated 17.1.2003 passed in Special Civil Application No.6894 of 2002. The relevant part of the said order reads as under :-

> "Under the circumstances, present petition is dismissed being premature with a direction that respondents before passing the order under Section 13 of the Act, shall afford an opportunity of being heard to the petitioner and shall consider all relevant aspects and contentions raised in the present petition. Respondents are further directed that if order passed is against the petitioner accepting the recommendations of removal, then such order shall not be made effective for a period of 10 days from the date of dispatch of the said order by R.P.A.D. to the petitioner. Notice discharged."

Therefore, when the petitioner was already given an opportunity of being heard by one Officer and the order has been passed by another Officer, as such as, per the decisions of this Court in case of ***(M/s) Shree Ram Packaging & Another V/s. Union of India and Another*** and ***M.D.Gohil V/s. State of Gujarat*** (Supra) the impugned order is in breach of principles of natural justice. At this stage, Shri Kamal Trivedi, learned Additional Advocate General has submitted that the petitioner will be given an opportunity afresh and she may appear before the respondent No.1 on 4th October, 2005. Shri Tushar Mehta, learned advocate appearing on behalf of the petitioner has submitted that the petitioner will appear before the respondent No.1 for afresh hearing on 4th October, 2005 and represent her case on that very date and will not ask for any

adjournment.

6. In view of the above, without expressing any opinion on merits, the impugned order dated 31.1.2005 is hereby quashed and set aside only on the ground that the same is in breach of principles of natural justice as the petitioner was heard by one Officer and the order was passed by another Officer and the hearing was given pursuant to the order passed by the learned Single Judge of this Court as stated herein above. It is also directed that the petitioner may represent her case before the respondent No.1 on 4th October, 2005 and the respondent No.1 is directed to pass an appropriate order in accordance with law and on merits. It is further observed that this Court has not expressed any opinion on the merits of the case and the impugned order has been quashed and set aside in the peculiar facts and circumstances of the case as stated herein above. It is also further observed and directed that if any adverse order is passed against the petitioner, the same shall not be implemented for a period of 10 days from the date of dispatch of the said order by R.P.A.D. to the petitioner.

7.With these observations and directions, the present Special Civil Application is disposed of.

Direct Service is permitted.

(M.R.SHAH, J.)

kdc.